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IN THE

SUPREME COURT OF THE UNITED STATES

——— Term, 1971

No. 1496

NATHAN T. DILL, - - - - - Petitioner,

versus

SOUTHERN JOINT COUNCIL OF THE AMALGAMATED DIVISIONS OF THE AMALGAMATED TRANSIT UNION, AFL-CIO, CLC;
THE GREYHOUND CORPORATION; and
SOUTHERN GREYHOUND LINES, a Division of GREYHOUND LINES, INC., - Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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Brief for Respondents, The Greyhound Corporation and Southern Greyhound Lines, a Division of Greyhound Lines, Inc., In Opposition

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TABLE OF CONTENTS

PAGE

Opinions Below 2

Jurisdiction 2

Counterstatement of the Questions Presented for Review 2– 3

Statutes Involved 4

Counterstatement of the Facts Material to the Consideration of the Questions Presented 4–23

Argument 24–36

First Question. There is no conflict of opinion and authority between the decision of the First Circuit in *DeArroyo* v. *Sindicato de Trabajadores Packing House, AFL-CIO* (CA 1, 1970), 425 F. 2d 281, and the decision in *Bazarte* v. *United Transportation Union* (CA 3, 1970), 429 F. 2d 868, and the Court of Appeals below 24–27

Second Question. The Petition for a Writ of Certiorari seeks a review of evidence and does not present questions for which there are special and important reasons that are in the public interest requiring review and decision by this Honorable Court 27–29

Third Question. Where the phraseology "application for employment" used in a collective bargaining contract is ambiguous and subject to interpretation as referring to either of two documents and where the phraseology was adopted by the parties *in toto,* without discussion, from a contract originally prepared by other parties and where neither type application document had ever had any signifi-

PAGE

cance until after the time of contracting, the accepted and usual course of judicial proceedings required the Appeal Court below to determine if subsequent events manifested compliance with the intent of the parties at the time the contract was executed 30–33

Fourth Question. The refusal of a Union to proceed to arbitration with the grievance of an individual union member does not constitute an arbitrary, discriminatory or bad faith breach of its duty of fair representation or perfunctory handling of the grievance where it has been fully investigated, a judgment has been made on its merits and the conclusion reached that arbitration would be a futile gesture 33–36

Conclusion 37

TABLE OF CITATIONS

PAGE

Bazarte v. United Transportation Union (CA 3, 1970), 429 F. 2d 868 ..... 2, 24, 26

De Arroyo v. Sindicato de Trabajadores Packing House, AFL-CIO (CA 1, 1970), 425 F. 2d 281 ... 2, 24, 26

Humphrey v. Moore, 375 U. S. 335 (1964) ... 24, 27, 28, 34–36

Layne and Bowler Corporation v. Western Wells Works, 261 U. S. 387, 392 (1923) 26–27

Magnum Import Co. v. Coty, 262 U. S. 149, 163 ..... 28, 33

Rice v. Sioux City Memorial Park Cemetery, 349 U. S. 70, 74 29

Rudolph v. United States, 370 U. S. 269 29

United States v. Johnston, 286 U. S. 220 ..... 29, 33

Vaca v. Sipes, 386 U. S. 171 (1967) 24, 26, 27, 28, 33, 44

IN THE

SUPREME COURT OF THE UNITED STATES

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No. _____

NATHAN T. DILL, - - - - *Petitioner,*

v.

SOUTHERN JOINT COUNCIL OF THE AMALGAMATED DIVISIONS OF THE AMALGAMATED TRANSIT UNION, AFL-CIO, CLC;
THE GREYHOUND CORPORATION; and
SOUTHERN GREYHOUND LINES, a Division of GREYHOUND LINES, INC., - - *Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Brief for Respondents, The Greyhound Corporation and Southern Greyhound Lines, a Division of Greyhound Lines, Inc., In Opposition

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondents pray this Honorable Court to deny the Petition of Nathan T. Dill for a Writ of Certiorari to issue to review the opinion and order of the Court of Appeals below.

OPINIONS BELOW

Respondents accept the reference in the Brief of the Petitioner to the Opinions and Orders of the Courts below.

JURISDICTION

The grounds stated by the Petitioner for invocation of the jurisdiction of this Honorable Court fail to comply with the provisions of paragraph 1(b) of Rule 23 of the amended Rules of this Honorable Court, in that the Petitioner has failed to state the date or time of entry of the judgment sought to be reviewed; or the statutory provision believed to confer on this Honorable Court jurisdiction to review the judgment in question by writ of certiorari.

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

(a) Is there a genuine conflict of opinion and authority between the decision of the First Circuit in *De Arroyo* v. *Sindicato de Trabajadores Packing House AFL-CIO* (CA 1, 1970), 425 F. 2d 281 and the decisions in *Bazarte* v. *United Transportation Union* (CA 3, 1970), 429 F. 2d 868 and the Court of Appeals below on the same matter?

(b) Do the matters, presented for review by the Petitioner's petition, involve questions so substantial that there are special and important reasons of great public interest requiring review by this Honorable Court; or would review by this Honorable Court con-

stitute only a review of evidence and specific facts serving only the benefit of the Petitioner?

(c) Where the phraseology "application for employment" used in a collective bargaining contract is ambiguous and subject to interpretation as referring to either of two documents and where the phraseology had been adopted *in toto* without discussion from a contract originally prepared by other parties and where neither type document had any significance whatsoever until after the time of contracting, would not the accepted and usual course of judicial proceedings be for the Appellate Court to determine if subsequent events manifested compliance with the intent of the parties at the time the contract was executed.

(d) Does the refusal of a union to take to arbitration the grievance of an individual union member constitute an arbitrary, discriminatory, or bad faith breach of its duty of fair representation or perfunctory handling of the grievance, where the grievance has been fully investigated and pressed through all steps of the grievance procedure and not submitted to arbitration only after the union has concluded arbitration would be fruitless and inimicable to industrial peace and the collective interest of all employees in the bargaining unit?

STATUTES INVOLVED

Respondents accept the reference in the Brief of the Petitioner to the statutes which the within case may involve.

COUNTERSTATEMENT OF THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED

The present controversy has arisen out of an alleged breach by Southern Greyhound Lines, a Division of Greyhound Lines, Inc. (hereinafter referred to as Greyhound) of the provisions of a seniority clause included for the first time in a Greyhound collective bargaining contract executed in the spring of 1963 (App. 299, 231).

At one time, Greyhound had been comprised of 17 different subsidiary companies each of which negotiated a separate contract with the Amalgamated Association of Street Electric Railway and Motor Coach Employees of America (hereinafter referred to as Street Employees). Subsequently, a number of these subsidiary companies had been merged into 3 different companies (App. 229). The negotiations for the 1962-1964 contract were pursued on a national basis between Greyhound and the Amalgamated Transit Union (hereinafter referred as the Union), the successor to Street Employees (App. 229, 231). As the result of the negotiations for the 1962-1964 contract which was finally signed on May 23, 1963, all Greyhound operations were covered under the provisions of a single con-

tract containing the terms of the former Eastern Greyhound contract, which provided the highest pay scale in the system (App. 230).

Notwithstanding the fact that a single collective bargaining contract covered all Greyhound operations after the ratification of the 1962-1964 contract, both Greyhound and Union continued to operate through regional and local divisions which were based upon geographical groupings. Petitioner Dill works in the Memphis division and is a member of Local 1500 of the Union (hereinafter referred to as Local). The president of Local, along with the presidents of the seven other local divisions of Union in the southern region, make up the Southern Joint Council of the Amalgamated Divisions of the Amalgamated Transit Union, AFL-CIO-CLC (hereinafter referred to as Southern Council) (App. 192).

Any member of Union having a grievance against Greyhound initiates it through his local union, and if the matter is not settled at that level, it is then appealed by Union to the Greyhound Director of Industrial Relations and placed on the agenda for the next succeeding meeting of the Southern Council (App. 193). If the grievance is of such nature as to effect the interests of employees other than the grievant, the local union is not competent to settle the matter within its own jurisdiction, and the grievance must be referred directly to the Southern Council (App. 193). Each member of the Southern Council, including the Chairman, has only one vote in resolving grievances and other controversies coming before that body (App. 193-194).

Petitioner Dill began his employment with Greyhound on June 24, 1957, as an apprentice mechanic at the company's Memphis, Tennessee, terminal (App. 24, 26, 37). In the late summer of 1963, he determined to attempt to qualify as a driver (App. 26). On September 4, 1963, Dill completed a Greyhound application form and was told that he would be notified prior to the commencement of the next drivers' school (App. 28). Subsequently, he was told to report to a hotel in Memphis where examinations were to be given for those desiring to attend drivers' school (App. 28). At that time, Dill learned that unlike previous drivers' schools, this school was to be conducted for all prospective Greyhound drivers by an outside organization named the Personnel Training Institute (P.T.I.) (App. 28-29, 160-161). Dill completed the application presented by P.T.I. on February 28, 1964, and on March 16, 1964, began classes at the P.T.I. School which was being conducted in Atlanta, Georgia (App. 92). The class in which Dill was enrolled was the first of three classes being conducted by P.T.I. for Greyhound, and in this first class there were approximately 80 prospective operators all being trained for Greyhound employment (App. 36, 160-161). On April 10, 1964, Dill, along with the other members of the first of the P.T.I. School classes, was graduated. He began work as a driver out of Memphis which continued to be his home base (App. 31, 36).

A notice had been posted on the bulletin board at the first session of the P.T.I. School on or about the 1st of April, 1963, informing all students that seniority

ranking would be established by P.T.I. application date and time (App. 112, 190; App. II 80).

Prior to the conclusion of the first P.T.I. class, Dill became aware when job assignments were being made for prospective graduates, that seniority rankings were not being based upon the Greyhound-form applications (App. 59).

In July 1964, Dill saw a seniority roster posted at the Memphis terminal. Thereupon, he complained to the Greyhound driving superintendent and the company regional manager and the President of Local concerning his ranking as shown on that roster (App. 38-39). Dill was informed by the company that his seniority ranking as it appeared on the July, 1964 seniority roster was proper, and for that reason would not be changed (App. 39-40). Dill refused to accept the ranking assigned to him by the July, 1964, roster and he filed a grievance with Local (App. 40-41). With the exception of the filing of the grievance, Dill took no further steps within the Local or Southern Council organization to place his grievance into arbitration. He never demanded that either Local or Southern Council take his grievance to arbitration, and at the time he filed his grievance only asked an official of Local to "get my seniority straightened out" (App. 45-46).

Several months after filing his grievance, Dill wrote to the President of the International Union regarding his grievance (App. 40). A course of correspondence then followed between Dill and certain members of the International Union Organization.

On January 20, 1965, Mr. Maroney, the Chairman of Southern wrote a letter to Dill explaining the manner in which the seniority roster for the graduates of the April 10, 1964, P.T.I. class had been established (App. 42; App. II 15). Thereafter, on March 24, 1965, Maroney again wrote to Dill stating that the driver's grievance had been denied by the Southern Council (App. 42; App. II 16). Dill never made any reply to Mr. Maroney concerning the contents of the letter of March 24, 1965, and never requested that his grievance be placed in arbitration (App. 228, 264).

The Petitioner indicated during the course of the trial and in his pre-trial deposition that he did not believe that either Local, Southern Council or Greyhound engaged in any dilatory tactics in response to his grievance (App. 270, Dill Pre-trial Deposition). Dill further admitted that his failure to ever present any evidence to the Southern Council in support of his grievance was not the result of any action or refusal to act by that body (App. 49, 270). Dill acknowledged that he had been kept intimately informed by Southern Council of the efforts being taken by both Local and Southern Council to find a proper resolution of the matter presented by his grievance (App. 51).

The grievance submitted by Dill to Local and Southern Council rests upon the Petitioner's interpretation of the seniority provision contained in the 1962-1964 collective bargaining contracts. That particular provision was but one of the numerous provisions of the Eastern Greyhound contract which was adopted *in toto* by all parts of the Greyhound system as the

results for the 1962-1964 contract (App. 229). The section of that contract in question reads as follows:

> "ARTICLE IV—NC. Section 1. SENIORITY ESTABLISHMENT.
>
> "The seniority rank of operators will be determined by the date of graduation from Drivers' School and prior to breaking-in and, as to simultaneous graduation, by the hour and date of application for employment. An operator graduated from Drivers' School ahead of his class will, for seniority rank purposes, be deemed to have graduated with his class. All applications are to be stamped as of the time of filing.
>
> "Duplicate copies, properly stamped, will be furnished to the Local Division after applicants become employees.
>
> "For pay rate purposes, commencement of employment shall be deemed to be the date of the commencement of actual service."

At the time negotiations were being conducted between the Greyhound and the Union for the contract in question, this particular section was not one which, at that juncture, appeared to merit any discussion, and no attempt was made to define the interpretation which should be placed on the terms of that section should Greyhound require those desiring to become drivers to make application to and be trained by an outside agency (App. 230-231).

Prior to the 1962-1964 contract, driver application forms were of no significance in establishing the seniority ranking of drivers graduating simultaneously from

a training school (App. 194, 221). Neither had the company ever before been required to submit to the local unions any of the applications required to be completed by the prospective drivers (App. 168). Past practice for establishing seniority ranking for those graduating simultaneously had varied from division to division within the Southern region. One division had established ranking by alphabetical listing of the graduates, while another division had established seniority precedence by permitting the graduates of the Drivers Training School to pick numbers from a hat (App. 134, 194, 221). With the execution of the new contract, the local unions, the Southern Council and the management of the Greyhound were all faced with new seniority provisions. Neither past contract provisions nor experience in establishing seniority gave any of these parties any basis upon which to rely in exactly interpreting the seniority provision in the situation which developed shortly after execution of the new contract in May of 1963 (App. 135, 172, 249).

In the late summer of 1963, Greyhound officials determined that demand for bus transportation would increase dramatically in 1964 principally because of the New York World Fair. In order to meet this increased load, a large number of new drivers would be required, and, in a break with past Greyhound practice, the decision was made in the late fall of 1963 to employ an outside agency of recommended efficiency to recruit and train all prospective operators (App. 134-135). This was to be the first training class conducted since the execution of the 1962-1964 contract (App. 172).

On the recommendation of a Mr. Clyde Wilcox, who was the Personnel Director for Southern Greyhound Lines, Greyhound officials contacted officials of P.T.I. in September of 1963, to discuss the possibility of P.T.I. undertaking recruitment and training of prospective Greyhound drivers (App. 134-135). By the terms of the agreement reached between Greyhound and P.T.I., P.T.I. was charged with the responsibility of recruiting applicants to attend the driver training courses to be conducted for Greyhound. In carrying out these responsibilities, P.T.I. advertised in local newspapers for men interested in becoming Greyhound operators (App. 89, 164, 232). In addition to those who responded to the newspaper advertisements, P.T.I. was informed by Greyhound of men who had indicated to the company that they were desirous of becoming operators (App. 68, 165). After determining what applicants were available for prospective employment, P.T.I. personnel would screen the men and have them complete applications and personal information forms (App. 164).

Mr. Henry Bransom, who is now deceased, was Vice President for industrial relations for Greyhound at the time the 1962-1964 contract was negotiated, and at the time that P.T.I. was selected to recruit and train Greyhound drivers. Recognizing that under the new contract, applications from prosepctive drivers became significant for the first time, Mr. Bransom determined to use the P.T.I. application dates as the standard for establishing seniority rankings for those students graduat-

ing simultaneously from the Driver Training School which P.T.I. was to conduct for Greyhound (App. 133). Mr. George Green explained the reason the P.T.I. application dates were chosen as the standard for the seniority rankings was that every prospective driver would have to complete a P.T.I. form for employment and Greyhound forms would not be required for employment of any of those attending the P.T.I. School (App. 160-161).

The P.T.I. School which began on March 16, 1963, was held exclusively for Greyhound trainees (App. 160-161, 92). Shortly after the first class, of which Mr. Dill was a member, had started its training, problems in the operation of the school arose. In order to assure that P.T.I. carried through on its obligations to Greyhound, Greyhound sent Mr. John Moran, a Safety Supervisor from the Company's Atlanta terminal to the school location (App. 87-89).

Among Mr. Moran's duties was the task of compiling a file of the P.T.I. applications for this first class of prospective drivers (App. 90-92). The P.T.I. School officials would not release custody of the records relating to the trainees to the Company, however, Moran was granted permission to copy the files. Equipment to make photostatic reproductions of the files was not available at the school, and the school could not afford to purchase a machine, however the 3M Company permitted the school to have a Thermofax copier on a trial basis along with a small amount of paper (App. 90-91). Moran copied as many files as the available paper permitted, and those copies were inserted in the students'

personnel files (App. 91). When the school requested more paper from 3M, the Company refused, and Moran was, therefore, precluded from copying any more of the personnel files (App. 91).

When Moran attempted to obtain information pertinent to the P.T.I. School applications dates and times for those trainees whose records had not been copied, all of the school's files relating to those men in question had been removed and he later discovered that they had been shipped to Richmond, Virginia, and placed under lock so as to be inaccessible to Greyhound (App. 96, 106). Immediately thereafter before any students could have possibly had knowledge that the P.T.I. applications had been removed from the school, Moran approached those students whose records he had been unable to copy and had those men state the time and date of their P.T.I. applications (App. 110, 111). After obtaining the information as to the P.T.I. application dates by way of copying the records and interviewing certain of the students, Moran drew up a roster containing this information as it related to the students graduating in the April 10, 1964, class (App. 87, 89, Exhibit 22). The roster prepared by Moran was subsequently employed to draft the list of seniority rankings for the graduates of the P.T.I. class of which Dill was a member. During the last week of the P.T.I. School, Dill learned that applications other than those printed by Greyhound were being used to establish seniority (App. 59).

The P.T.I. applications were the only form of application required to be completed by all prospective

operators (App. 161). In many instances, the Greyhound applications for the April 10, 1964 graduates which have been filed as a part of the evidence in this case, were completed long after the dates on which the P.T.I. applications had been completed, and in a number of instances only after the school had begun (App. 126). These later Greyhound applications were required to be completed by the students simply to provide Greyhound field superintendents certain personal information on the men which was not available after the removal of the original P.T.I. files (App. 129).

Although Petitioner Dill contends that both Local and Southern Council failed to act in good faith in regard to his grievance, the record reveals that these two parties had in fact acted with great expedience on behalf of both Dill and several other employees who filed similar grievances. In mid-April, 1964, two drivers, Mr. Nipp and Mr. Douthitt, who graduated in the Drivers Training Class with Dill, filed a grievance through Mr. Ted Smith questioning the seniority standard applied by Greyhound for the first P.T.I. class (App. 56, 57, 60, 61). Mr. Smith was the Paducah, Kentucky, Committeeman for Local, and shortly after preparing the grievance on behalf of Nipp and Douthitt, he informed Douthitt that Mr. Peck, the President of Local, and according to Douthitt, the current Chairman of Southern Council, would take the grievance up with Mr. Bransom at a meeting in Chicago (App. 61, 62).

In mid-June, 1964, Greyhound wrote a letter to Mr. Peck notifying him that the P.T.I. application dates

had been used as the standard by which seniority rankings were compiled (App. 61, 142, App. II 67). Another letter was written to Mr. Peck shortly thereafter by Mr. Tucker, a Greyhound superintendent, which contained essentially the same information that had appeared in the earlier letter to Peck regarding the seniority rankings (App. 142-143, App. II 68).

Thereafter, on July 6, 1964, Mr. Peck wrote to Mr. LeRoy Logsdon, Greyhound's Regional Manager in Memphis, demanding that the grievance filed by Nipp and Douthitt through Ted Smith be reviewed (App. 143; App. II 69). In response to Mr. Peck's July 6, 1964, letter, Mr. George Green, Mr. Bransom's assistant at that time, received a letter dated July 8, 1964, from Mr. Logsdon, informing Mr. Green of the position Local had taken on the grievance of Nipp and Douthitt (App. 146; App. II 71). Subsequent to this inquiry from Mr. Logsdon, Mr. Green was placed in charge of the investigation relating to the particular grievance (App. 132-133). It was at this same time that Mr. Dill filed his grievance in regard to the matter which had already been placed before the Local by the Nipp-Douthitt grievance (App. 39).

As a standard operating procedure, Southern Council and Greyhound met every 60 to 90 days to discuss grievances. However, in the fall of 1964, the Company and the Union were engaged in contract negotiations, and a decision was made to postpone further joint meetings until the negotiations could be completed (App. 176). Earlier, however, on August 26, 1964, before the postponement became effective, the company

officially informed the Southern Council at a joint meeting that the P.T.I. application dates and times had been employed to establish the seniority rankings for those drivers graduating in the April 10, 1964, P.T.I. class (App. 152, 153). In the course of that joint meeting, the grievances relating to the seniority matter were discussed by Southern Council and the Company. As the minutes of that meeting make clear, Southern Council did not have before it any records from either the company or the grievants which were necessary for the Council to make an intelligent study of the matter (App. II 82). As Mr. Maroney, the Chairman of Southern Council, noted, the solicitation of drivers and the conduct of the training school by P.T.I. presented a unique situation never before encountered by either Southern Council or Greyhound, and without access to all available records, Southern Council could not possibly state whether or not the company had, in fact, violated any provision of the contract (App. 172, 249). After the joint meeting between the company and Southern Council in August, Greyhound mailed to Council the requested application documents (App. 209).

The P.T.I. seniority grievance matter was next taken up by the Southern Council after Maroney had received the documents from the company in November of 1964, and before the Council was to meet in joint session with the company in January, 1965 (App. 217). At this meeting of the Southern Council, the documents received from the company were examined by the eight members of the Council, and finally a committee of

15 persons, including many of the financial secretaries of the local divisions, was appointed to make a thorough study of the documents and make a recommendation to the Council as to the proper course to be pursued in regard to the grievances (App. 218, 273, 291). According to Mr. Dill's own rebuttal witness, Mr. John Roy Jones, this large committee spent a number of hours working with these documents attempting to find a resolution to the seniority problem (App. 291).

Mr. Ellis Franklin, who was a member of that committee, testified to the physical effort and soul-searching that this large committee undertook in attempting to establish a line of attack which the Southern Council could take in regard to the matter presented by the P.T.I. seniority grievances. Commenting on the efforts of this committee, Mr. Franklin stated:

> ". . . then we went over into the other room, and we started to try to come up with some recommendation to the Council. The first thing we did was separate them into three schools, and then Emory Gray, I guess you would say was acting as kind of the secretary to this committee, and he had a legal pad, and we started out trying to take the Greyhound applications first; to the best of my memory, that was the first thing we did. Well, we ran into problems on this, because we found some that didn't have dates and some that didn't have times, and, of course, some people that were on the roster didn't have neither one. Of course, I haven't got into the PTI part of it yet, but some of them didn't have either PTI or Greyhound, and they listed across this yellow sheet of paper the name of the person, of the drivers, and the Grey-

hound application of the PTI application, and then we got on over where we didn't have anything one way or the other and, of course, some of the information under the PTI and under the Greyhound was incomplete, because it maybe didn't have a date or time or possibly both. Now, I have heard it testified here, and to the best of my memory there was more PTI applications in that school once we got them separated. Now, I am not talking about the second and third school, but there were more PTI applications than what I had heard referred to here. Now, that's the best of my memory. We didn't actually make a head count as to twenty-five PTI's versus forty Greyhound, and fifteen or nothing. But I am just relying on my memory, that to me there was more PTI applications that were in that first group than what I believe was reported here, sixteen.

Q. What is your recollection, if any, as to the number of Greyhound applications that were in that first group, that is for the drivers of the April 10th graduating class?

A. Well, to the best of my memory there weren't as many as were reported here. Now, I don't know exactly why the difference in it, because I believe it was sixty-five that were testified here of Greyhound and sixteen of the others . . . (App. 273-274).

Then the first thing we tried was to take the Greyhound applications and apply this, because the Council had asked us to make a recommendation to them, and we couldn't do this. Then we tried to take the Greyhound and the PTI and see if we could come up with conclusive dates and times to build a complete roster. We could not do

> this. And then, of course, we didn't know at this time about the ones that didn't have nothing, and the Council I don't believe knew it either. But I know we didn't know it, and they didn't tell us, and we didn't know they had secured this oral testimony or what. We were given this group of applications and asked to see if we could get them in some order and to come back and make a recommendation to the Council and through trying every avenue, the Greyhound application, strictly the PTI applications or the Greyhound and PTI applications, we could not come up with an absolute seniority roster in order" (App. 274-275)."

The committee appointed by the Council was wholly unconcerned with the names on the applications and based its entire study on the dates and time found on those documents.

Since the committee found that a number of the relatively few Greyhound application forms for those in the April 10, 1964, graduating class had either or both times and dates of application missing and since the same defect existed as to some of the P.T.I. applications, the committee was unable to recommend any final solution, either legal or equitable, to the problem presented by the various grievances (App. 280).

After its own intra-union meeting in January, 1965, the Southern Council met with Greyhound officials when the first joint meeting between company and Council was held in January after the contract negotiation postponement had terminated. At this meeting, the company was vigorously questioned by members of the Council as to how the seniority rankings for Dill's

class had been determine. Mr. Maroney, the Council Chairman, indicated that he and other members of the Council became greatly concerned when they learned for the first time that some of the P.T.I. application times and dates used by Greyhound in establishing seniority had been determined through personal interview (App. 219-220).

The Southern Council saw that this new information from Mr. Bransom might possibly throw a different light on the facts earlier determined by the Council of 15 and recognizing that any decision made by the Council would influence not only the individual grievants, but every man who had attended the P.T.I. schools, the Council determined to make further study concerning the seniority ranking problem (App. 220, 222, 223).

When the Southern Council next gathered for its own meeting in March of 1965, there was great concern because a basis had not been found on which to test the company's application of the seniority provision of the contract. A discussion at that meeting of the Council was described in detail by Mr. Maroney:

> "Yes. Well, we had many suggestions. Some I have heard here from the Council members, and I more or less thought rather than suggestions in sitting around, all of us were bus drivers and probably the least seniority on the Council I would say was about fifteen years driving. But we were all concerned with the seniority, and we know what it means to the people, and we had lengthy discussions, and we had certain thoughts, and ideas put across such as why not put their names in a hat and

let everybody draw them out, and we will start all over again. We had—let's go to the alphabet—suggestion. We had all kinds of suggestions, flipping the coins and other ways. It was a lengthy discussion. We did not feel, and I personally did not feel that any of these was the proper solution by the mere fact that we ourselves would not be complying with the contract to the letter. The fact that the contract speaks for itself, and it was very clear that they should go on as to the date and time of application. So these were all dismissed with the thought in mind that taking any other action such as our experience had produced in the past would not be in compliance with the new labor agreement that we were working under at this time, and in the end we came to the conclusion that the only thing we could possibly do would be to leave the people stand on the rosters as they were presently working. There were complaints generally from all over as to what their seniority was. I am not sure that it has been brought out here, but some of those Greyhound applications that had Greyhound across the top did not have dates on them. There may be a few of them that had times and no dates, and as was brought out earlier, they were all mixed up. The people that had absolutely nothing, we could not justify in our own mind to say—we will use this group of people and place them on the head, because they have a Greyhound application, and here is a group that has nothing. But we couldn't justify saying—put this group on first, and then the PTI, and take the dates these give us. We didn't know. We had to take their word. I call to your attention one of the members by the name of Hall who had filed the Greyhound

application for the '63 school. Now, he decided not to go on his own because of personal problems. He decided on his own not to go to school, and I don't know what became of the '63 application, and we wouldn't have viewed it any way. But the question of how we were in our own minds going to justify moving these people up, or down, even one step, was quite a problem, because all we had before us is what the Greyhound had said they had done. They first produced some applications, and then they produced some evidence that they took the personal interview. So we felt that these people are now working and have been working rightly or wrongly. The decision was they had been working under this structure of seniority roster this long, and they started out this way, and it would appear that since we cannot adjust the seniority to Mr. Douthitt, Mr. Nipp, Mr. Jones and Mr. Brown properly and in complete compliance with the contract, our only other alternative was to leave it stand as they were presently working, and this brought about a motion in the discussion. Finally, there was a motion made that we would accept as they presently stand" (App. 223-224).

Aside from the numerous intra-council meetings and Joint Southern Council-Greyhound conference and correspondence which had been engaged in an attempt to resolve the Nipp-Douthitt-Dill grievances, officials of Southern Council even contacted the Eastern Council which had been responsible for interpretation and application of the Eastern Contract long before it had been accepted for the entire Greyhound system (App. 250). The Eastern Council members could provide no

assistance, because, like Southern Council, they had never been faced with a situation in which an outside agency had recruited and trained drivers for Greyhound (App. 250).

After the lengthy debate which occurred within the Council meeting of March 10, 1965, at which time it was determined all available facts indicated arbitration would be fruitless, the Council on motion duly made chose to accept the existing seniority rankings for the P.T.I. School graduates as they then existed (App. 215-216, 252-253). Each member of the Council had only one vote, and it is clear that no attempt was made within the Council to discriminate in favor of or against any particular person or region in reaching this decision to not proceed to arbitration (App. 193, 195).

After the meeting of March 10, 1965, Mr. Dill was informed of the action taken by the Council in the form of a letter to him. However, he never made any reply to the Council concerning that decision, or asked that the matter be pursued into arbitration (App. 228, 229; App. II 16).

ARGUMENT

FIRST QUESTION

There is no conflict of opinion and authority between the decision of the First Circuit in *DeArroyo* v. *Sindicato de Trabajadores Packing House, AFL-CIO* (CA 1, 1970), 425 F. 2d 281, and the decision in *Bazarte* v. *United Transportation Union* (CA 3, 1970), 429 F. 2d 868, and the Court of Appeals below.

The Petitioner may not validly invoke the review by this Honorable Court on the grounds that the Court below has rendered a decision in conflict with the decision of another Court of Appeals in the same matter. *DeArroyo* v. *Sindicato de Trabajadores Packing House, AFL-CIO, supra,* is cited by Petitioner as creating a conflict of decision. Examination of that decision and those rendered in *Bazarte* v. *United Transportation Union, supra,* and the Court below clearly demonstrates that each court accepted and properly applied the standards enunciated in *Vaca* v. *Sipes,* 386 U. S. 171 (1967), and *Humphrey* v. *Moore,* 375 U. S. 335 (1964), to the widely disparte factual situations presented to them for their consideration.

In *DeArroyo* v. *Sindicate de Trabajadores, supra,* the evidence revealed that a number of employees presented grievances to their union after they had been discharged because of automation. It was uncontroverted that after receipt of the grievance by the union it made no effort whatsoever to initiate even a cursory investigation of the claims of any of the griveants ex-

cept one.[1] Neither did the union undertake any discussion of or judgment concerning the merits of the grievances of the six discharged employees. The First Circuit reached the only decision possible in view of the uncontradicted facts presented to it—the union's blatant non-action constituted an arbitrary and perfunctory response to the employees' grievances.

In the case below the facts presented to the District Court and the Court of Appeals demonstrate the tremendous effort undertaken by the numerous union officials who investigated and attempted to make a valid judgment as to proper course to pursue in handling the grievances of the Petitioner and Mr. Douthitt and Mr. Nipp.

Notwithstanding the fact that Mr. Dill never demanded that his grievance be taken to arbitration, the Union considered it in plenary sessions of the Southern Council in August, 1964, November, 1964, January, 1965, and March, 1965. The Southern Council demanded that Greyhound turn over to it the Company's entire file of P.T.I. and other applications. A special committee of fifteen, including many union officials, was appointed to make an in-depth study of the documents received. That large committee was ordered to recommend to the Southern Council what action its study indicated should be taken on the grievances. Only after the completion of that study and still further discussion among the full membership of the Southern

[1]Judgment was rendered in favor of the Union as to the grievance of the least senior of the seven employees which was the only grievance it investigated. 425 F. 2d 281, 284, footnote 3.

Council was it determined that placing the grievances in arbitration would be an entirely fruitless effort.

In *Bazarte* v. *United Transportation Union, supra,* the Union conducted a full investigation of the employee's grievance . The decision to not place the claim in arbitration was made only after the union had represented the grievant at the local level hearing and only after it had been determined that all available evidence was strongly damaging to the employee's claim.

Each of the respective circuits agreed that *Vaca* v. *Sipes, supra,* was controlling and that union's duty of fair representation required that the union not deal with the employee's claim perfunctorily, or in bad faith, or in an arbitrary manner. In the Court below and in *Bazarte* v. *United Transportation Union, supra,* at page 872, each Circuit Court found on the facts presented that the respective unions had not acted in a perfunctory, arbitrary or bad faith manner. In *De Arrozo* v. *Trabajadores Packing House, AFL-CIO, supra,* the Court found on the facts presented that the Union had so handled the grievances presented to it.

There was a vast difference between the facts presented to the First Circuit and those presented to the Court below and the Third Circuit. There was not any variance or conflict between the opinion and authority of the three Circuits.

A conflict in factual situations does not create grounds for issuance of a Writ of Certiorari. As this Honorable Court pointed out in *Layne and Bowler Corporation* v. *Western Well Works,* 261 U. S. 387, 392 (1923):

> "If it be suggested that as much effort and time as we have given to the consideration of the alleged conflict would have enabled us to dispose of the case before us on the merits, the answer is that it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, *and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals.* The present case certainly comes under neither head." (Emphasis added.)

There is no conflict and no valid basis requiring this Honorable Court in the exercise of its sound discretion to issue the Writ sought by the Petitioner.

SECOND QUESTION

The Petition for a Writ of Certiorari seeks a review of evidence and does not present questions for which there are special and important reasons that are in the public interest requiring review and decision by this Honorable Court.

The Petition for a Writ of Certiorari to this Honorable Court presents no question indicating conflict of the decision in the Court below with any applicable decisions of this Honorable Court. All parties to this action have agreed that the matters involved in the present litigation are governed by the decisions of this Honorable Court in *Vaca* v. *Sipes, supra,* and *Humphrey* v. *Moore, supra.* Neither the facts of this case nor the Petitioner's brief in support of his Petition for

a Writ of Certiorari reveal any question of federal law or of public interest requiring review by this Honorable Court which has not already been fully discussed and finally determined in *Vaca* v. *Sipes, supra,* and *Humphrey* v. *Moore, supra.*

The Respondents vouchsafe that the matter of appeal to this Honorable Court is of preeminent importance to the Petitioner, as every appeal is significant to every litigant. However, this case presents no question not already answered in *Vaca* v. *Sipes, supra,* and *Humphrey* v. *Moore, supra,* which it is at all in the public interest to have considered by this Honorable Court. The Petitioner at most is seeking a review and reassessment by this Honorable Court of the evidence presented below. Such is not a valid basis for seeking exercise by this Honorable Court of its discretion to require issuance of a Writ of Certiorari to the Court below.

As this Honorable Court pointed out in *Magnum Import Co.* v. *Coty,* 262 U. S. 149, 163:

> "The jurisdiction to bring up cases by certiorari from the Circuit Court of Appeals was given for two purposes, first to secure uniformity of decision between those courts in the nine circuits, and second, to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort. *The jurisdiction was not conferred upon this court merely to give the defeated party in the Circuit Court of Appeals another hearing.* Our experience shows that 80 per cent of those who petition

> for certiorari do not appreciate these necessary limitations upon our issue of the writ." (Emphasis added.)

Again in *Rice* v. *Sioux City Memorial Park Cemetery,* 349 U. S. 70, 74, Mr. Justice Frankfurter succinctly stated this Honorable Court's standard when he wrote:

> "A federal question raised by a petitioner may be of 'of substance' in the sense that abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants."

Further indication of the historically consistent refusal of this Honorable Court to issue a Writ of Certiorari to those who have previously stood in the stead of the Petitioner is found in *United States* v. *Johnston,* 286 U. S. 220, wherein it ruled, "We do not grant a certiorari to review evidence and discuss specific facts." Still later, in *Rudolph* v. *United States,* 370 U. S. 269, it was stated that where review of the Circuit Court decision would be of no importance except to the litigants themselves, the Writ should not issue.

The Petition herein presents to this Honorable Court no unresolved questions of federal law or of substantial public interest. At most Petitioner seeks a rehearing on the evidence for his benefit. The Respondents respectfully submit that it would be most improvident for this Honorable Court to issue a Writ of Certiorari to the Court below in this action.

THIRD QUESTION

Where the phraseology "application for employment" used in a collective bargaining contract is ambiguous and subject to interpretation as referring to either of two documents and where the phraseology was adopted by the parties *in toto*, without discussion, from a contract originally prepared by other parties and where neither type application document had ever had any significance until after the time of contracting, the accepted and usual course of judicial proceedings required the Appeal Court below to determine if subsequent events manifested compliance with the intent of the parties at the time the contract was executed.

The Petitioner has consistently failed to show that Greyhound either breached or misinterpreted Article IV-N C Section 1 of the Contract in question. Petitioner has mismanaged the evidence in the record insofar as he has stated that Greyhound acknowledged the use of the P.T.I. forms in establishing seniority to be contrary to the contract provisions. Greyhound has consistently maintained just the converse. The District Court, in fact, acknowledged the validity of Greyhound's contention that it never violated the contract, when that Court stated:

> "We agree that, where a driver-trainee who was attending the school had not made such application to Greyhound, but had made such application to P.T.I., it might be a permissible interpretation of the contract to treat the application to P.T.I. as an application for employment."

Prior to the execution of the 1962-1964 contract, applications of no type were of any significance in assigning seniority ranking for new drivers. Furthermore, prior to the P.T.I. class in the early spring of 1964, of which Mr. Dill was a member, Greyhound had always recruited its own drivers for employment and had always conducted its own driver training classes for them. When, in the fall of 1963, it was determined by Greyhound to employ an outside agency to both recruit and train those to be employed as drivers, a factor was introduced which had not been contemplated by any party at the time the contract was negotiated, the Eastern Greyhound contract seniority provisions were adopted *in toto* by Greyhound and Southern Council. Neither Eastern Greyhound nor the Union's Eastern Joint Council had ever been required to interpret or apply the seniority clause of the so-called Eastern contract in a situation in which an outside agency recruited and trained drivers. Therefore, at the juncture when P.T.I. was chosen to recruit and train drivers exclusively for Greyhound employment, a situation arose in which neither past experience nor past bargaining history provided any background for interpretation of the seniority clause.

Greyhound recognized that the phrase, "application for employment" as employed by the collective bargaining contract was employed in the generic sense of the term rather than the restrictive sense in which the District Court eventually erroneously concluded it should be read. It is obvious that the District Court based its finding on a myopic view of the facts, finding

that before the execution of the 1962-1964 contract, the phrase in question had always meant a form compiled by Greyhound. However, as the record of this case clearly reveals, never before had drivers applied for Greyhound employment through an outside agency. The application referred to in the contract clearly referred to that application which would lead to employment with Greyhound rather than being any specific type of document containing certain wording which had been prepared by Greyhound.

Mr. Bransom realized when P.T.I. was chosen as the recruiting and training agency for Greyhound that while a few prospective drivers might have filled out application forms at Greyhound terminals scattered around the South, that only the P.T.I. applications would provide a complete roster of all men seeking employment as Greyhound drivers in the spring of 1964. Furthermore, only those who completed the applications provided by P.T.I. and under-went P.T.I. training would actually be eligible for employment by Greyhound since no other driver-training schools were to be held by the company during that period. Thus, even though some few prospective drivers might have filled out forms provided by Greyhound Personnel in late 1963 or early 1964, only the P.T.I. applications could actually be considered applications for employment for that period.

Clearly the Court of Appeals below did not attempt to construe the collective bargaining contract by examination of events subsequent to the execution of the contract, but simply viewed subsequent events to de-

termine whether the prior-to-contracting intentions of the parties had been fulfilled.

However, the question presented by Petitioner's First Quesion is in reality moot since the employer could only be found liable if the Union had been guilty of breach of the duty of fair representation and the Court Below found that there was no breach by the Union of that duty. *Vaca* v. *Sipes,* 186 U. S. at 196.

FOURTH QUESTION

The refusal of a Union to proceed to arbitration with the grievance of an individual union member does not constitute an arbitrary, discriminatory or bad faith breach of its duty of fair representation or perfunctory handling of the grievance where it has been fully investigated, a judgment has been made on its merits and the conclusion reached that arbitration would be a futile gesture.

By Question Three presented in his Petition for a Writ of Certiorari to the Court Below, Petitioner Dill seeks no more than a re-examination of the evidence by this Honorable Court. It is therefore not a proper question for consideration by this Honorable Court, *Magnum Import Co.* v. *Coty, supra; United States* v. *Johnston, supra.*

Notwithstanding the impropriety of Petitioner's question, since it has been presented, Respondents believe a reply should be made.

Without burdening this Honorable Court with a restatement of the evidence, the record when considered as a whole, in context, manifests beyond dispute that a most diligent effort was undertaken by the entire

executive membership of Southern Council to properly handle and resolve the grievances of Mr. Dill, Mr. Douthitt and Mr. Nipp. Only after complete investigation and full discussion of the seniority grievances did Southern Council, by unanimous vote—including that of the president of the Petitioner's Local decide not to place the grievances into arbitration (App. 215-216; App. II 85, 87). The factor of great significance influencing the Southern Council's final decision not to arbitrate the grievances was that all the records required to present the question of the P.T.I. School graduates seniority to an arbitrator were non-existent (App. II 87). Clearly, placement of the matter into arbitration would have been a fruitless effort (App. 252-253).

In *Vaca* v. *Sipes,* 386 U. S. at 194, 195, this Honorable Court ruled:

> "Having concluded that the individual employee has no absolute right to have his grievance arbitrated under the collective bargaining agreement at issue, and that a breach of the duty of fair representation is not established merely by proof that the underlying grievance was meritorious, we must conclude that that duty was not breached here."

Earlier in *Humphrey* v. *Moore,* 375 U. S. at 349, 350, this Honorable Court stated:

> "But we are not ready to find a breach of the collective bargaining agent's duty of fair representation in taking a good faith position contrary to that of some individuals whom it represents nor

in supporting the position of one group of employees against that of another. In Ford Motor Co. v. Huffman, 345 U. S. 330, 73 S. Ct. 681, 97 L. Ed. 1048, the Court found no breach of duty by the union in agreeing to an amendment of an existing collective bargaining contract, granting enhanced seniority to a particular group of employees and resulting in layoffs which otherwise would not have occurred. 'Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.' Id., 345 U. S. at 338, 73 S. Ct. at 686. Just as union must be free to sift out wholly frivolous grievances which would only clog the grievance process, so it must be free to take a position on the not so frivolous disputes. Nor should it be neutralized when the issue is chiefly between two sets of employees. Conflict between employees represented by the same union is a recurring fact. To remove or gag the union in these cases would surely weaken the collective bargaining and grievance processes.

" 'As far as this record shows, the union took its position honestly, in good faith and without hostility or arbitrary discrimination. After Dealers absorbed the Louisville business of E & L, there were fewer jobs at Dealers than there were Dealers

and E & L drivers. One group or the other was going to suffer. If any E & L drivers were to be hired at Dealers either they or the Dealers drivers would not have the seniority which they had previously enjoyed. Inevitably the absorption would hurt someone. By choosing to integrate seniority lists based upon length of service at either company, the union acted upon wholly relevant considerations, not upon capricious or arbitrary facts. The evidence shows no breach by the union of its duty of fair representation'."

Mr. Dill agreed that neither Southern Council nor Greyhound had ever engaged in any dilatory tactics in response to his grievance. The Petitioner's complaint then is with the final decision reached by the Southern Council, not with the procedure followed in reaching that decision (App. 45-46, 270).

The decisions of this Honorable Court make clear beyond question that even if considered on the merits, the Petitioner's claim that the Southern Council handled his grievance perfunctorily or failed to pursue the grievance in good faith, is a claim wholly without substance.

CONCLUSION

For the foregoing reasons, Respondents submit that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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